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Comptroller of the Currency  
Administrator of National Banks

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Central District Office  
One Financial Place, Suite 2700  
440 South LaSalle Street  
Chicago, Illinois 60605

**Corporate Decision #2002-1  
February 2002**

January 2, 2002

Ms. Victoria L. Strobel  
Vice President & Assistant Secretary  
Marshall & Ilsley Corporation  
770 North Water Street  
Milwaukee, Wisconsin 53202

**Re: Application to merge M&I Marshall & Ilsley Trust Company of Arizona, Scottsdale, Arizona, Marshall & Ilsley Trust Company of Florida, Naples, Florida, and Marshall & Ilsley Trust Company, Milwaukee, Wisconsin, with and into M&I National Trust Company, Milwaukee, Wisconsin, under the charter of the latter and the title of "Marshall & Ilsley Trust Company, National Association"  
OCC Application Number: 2001-CE-02-0047**

Dear Ms. Strobel:

This is to inform you that, on January 2, 2002, the Office of the Comptroller of the Currency ("OCC") approved the proposed merger of M&I Marshall & Ilsley Trust Company of Arizona, Scottsdale, Arizona, Marshall & Ilsley Trust Company of Florida, Naples, Florida, and Marshall & Ilsley Trust Company, Milwaukee, Wisconsin, with and into M&I National Trust Company, Milwaukee, Wisconsin, ("Bank") under the charter of the latter and the title of "Marshall & Ilsley Trust Company, National Association." This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and those of your representatives.

The Bank is a national bank whose operations are limited to those of a trust company and activities related thereto. It does not accept deposits, and it is not an insured bank under the Federal Deposit Insurance Act ("FDIA"). The Bank's principal place of business is in Wisconsin, and it has trust offices in Arizona and Florida. The three target institutions are state trust companies chartered by their respective states. Like the Bank, they do not accept deposits and are not insured under the FDIA. The Bank and the three state trust companies are affiliates.

Under the proposal, the three state trust companies will merge into the Bank under 12 U.S.C. § 215a, the Bank will succeed to the current fiduciary business of each institution under

Ms. Victoria L. Strobel  
Vice President & Assistant Secretary  
Marshall & Ilsley Corporation  
January 2, 2002  
Page 2 of 3

12 U.S.C. § 215a(e), and after the merger the Bank will continue engaging in fiduciary activities through its offices in all three states. Under section 215a, a national bank may merge with another national bank or a state bank, including state trust companies, located in the same state. 12 U.S.C. § 215a(a). For purposes of section 215a, a limited purpose national trust bank is located in the state in which it has its main office and in states in which it has a trust office. *See* Decision on the Application to Merge Neuberger Berman Trust Company, New York, New York, into Neuberger Berman National Trust Company, Seattle, Washington (OCC Corporate Decision No. 2001-29, September 28, 2001). The Bank has its main office in Wisconsin and trust offices in Arizona and Florida, and so it is located in each of those states. Each of the three state trust companies is located in its respective state. Thus, the merger of each trust company into the Bank is authorized under section 215a.

The Bank currently conducts fiduciary business at its trust offices in Arizona and Florida, as well as in Wisconsin, and after the merger, it will continue to do so. National banks that have fiduciary powers under 12 U.S.C. § 92a may exercise those powers in any state and may establish trust offices to facilitate that business. *See, e.g.*, 12 C.F.R. § 9.7; OCC Interpretive Letter No. 866 (October 8, 1999); OCC Interpretive Letter No. 695 (December 8, 1995).

In processing the application, a question arose regarding a provision of Arizona law. Arizona law requires that a person obtain a certificate from the Superintendent of Banking before engaging in trust business in Arizona. Ariz. Rev. Stat. § 6-853. The statute excepts insured banks, including insured national banks, from this requirement. Since the Bank is not an insured bank, the question arose whether the Bank was required to comply with the state law. An uninsured national trust bank is no different from an insured national bank with respect to its trust powers, supervision by the OCC, and the extent to which federal laws granting national bank powers, including trust powers, preempt state law. And, since national banks are authorized under federal law to exercise trust powers, it follows that states may not limit the exercise of those powers or require the additional permission of the state to exercise those powers. Accordingly, the Arizona statute would be preempted with respect to uninsured national trust banks such as the Bank. *See, e.g.*, 12 C.F.R. § 9.7(e); OCC Interpretive Letter No. 866. *See also Barnett Bank of Marion County, N. A. v. Nelson*, 517 U.S. 25 (1996) (national bank preemption generally). We have corresponded separately with the Arizona Attorney General's office on this issue. A copy of our letter to the Arizona Attorney General's office is enclosed.

As a reminder, the district office must be advised in writing in advance of the desired effective date for the merger, so that the OCC may issue the necessary certification letter. We will not issue a letter authorizing consummation of the mergers until we have received:

- (1) A Secretary's Certificate for Marshall & Ilsley Trust Company of Florida certifying that the required board approval has been obtained.

Ms. Victoria L. Strobel  
Vice President & Assistant Secretary  
Marshall & Ilsley Corporation  
January 2, 2002  
Page 3 of 3

- (2) A Secretary's Certificate for each applicant bank certifying that the required shareholder approvals have been obtained.
- (3) A copy of the resulting bank's articles of association reflecting the change in title.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or an officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions, please contact the undersigned or National Bank Examiner Carolina M. Ledesma at (312) 360-8867.

Sincerely,

/s/

David J. Rogers  
National Bank Examiner

cc: Craig Raby Assistant Attorney General  
Consumer protection and Advocacy Section  
Attorney General's Office  
1275 West Washington Street  
Phoenix, Arizona 85007